

J. J. Thomson, "A Defense of Abortion."

1. Thomson's Position: Is it ever permissible for a woman to abort her pregnancy? Thomson argues that abortion is at least sometimes morally permissible. She claims that when rape results in pregnancy, abortion certainly is permissible, and that there are several other cases in which abortion is permissible as well.

2. Arguments against Abortion

A. One main line of argument *against* the permissibility of abortion begins with the claim that fetuses are people.

Argument A:

- (1) A fetus is a person.
 - (2) People have an inalienable right to life; it is never moral to kill a person.
 - (3) To abort a fetus is to kill it.
- Therefore,
- (4) Abortion is never moral.

B. Those who argue that abortion is permissible often claim that their opponents hold inconsistent views. It is hypocritical, some say, to argue that abortion is never permissible, while also allowing that capital punishment sometimes is permissible. This criticism would be warranted if the reason a defender of capital punishment had for believing in the impermissibility of abortion were captured by argument A. Why? Because premise (2) entails that capital punishment is impermissible. But is (2) true?

Question: A **counter-example** is an example that shows that an argument or claim is false. If you say "If something is an A, then it must be a B," and I describe an A that isn't a B, I've presented a counter-example to your claim. Can you describe a counter-example to premise (2)? Can you describe a case in which someone is justified in killing a person?

C. The anti-abortion position can be made consistent with the pro-capital punishment position by dropping Argument A in favor of another:

Argument B:

- (1) A fetus is a person.
 - (2) People have a right to life, but it *isn't* inalienable. That is, there are circumstances in which one can relinquish one's right to life.
 - (3) A person can only relinquish her right to life by willfully and intentionally harming another person or attempting to inflict such harm. It is only if a person has willfully and intentionally harmed another (or attempted to do so) that it is morally permissible to kill that person.
 - (4) Fetuses are incapable of willfully and intentionally harming others (or attempting to do so).
- Therefore,
- (5) Every fetus retains its right to life; it is never moral to kill a fetus.
 - (6) To abort a fetus is to kill it.
- Therefore,
- (7) Abortion is never permissible.

3. The Typical Response

Typically, those who think that abortion is sometimes permissible counter Argument B by arguing against premise (1). If fetuses aren't people, then we can allow that people have a right to life without allowing that fetuses have a right to life. The interesting thing about Thomson, though, is that she grants

premise (1) for the sake of argument. That is she grants that fetuses are people and endeavors to show that even if fetuses are people, abortion may still be permissible in certain circumstances. Thomson does not reject premise (1). Actually, Thomson reveals at the end of her article that she thinks only **some** fetuses are people. According to Thomson we have an additional reason for rejecting argument B if it is used to argue for the impermissibility of *early term* abortion. Premise (1) is false unless it is restricted to *late term* fetuses. Thomson thinks late term fetuses are people because she thinks that people are their bodies. That is, she thinks that what is essential to being a person is something merely physical; not something (like intelligence) that is psychological. (One might also challenge premise (6) by introducing a distinction between **killing someone** and **letting someone die**. We'll discuss this further later.)

4. Thomson's Argument

Thomson's argument relies on the observation that rights can **conflict**. An example: Suppose Liar sells twenty people a 10% stake in his company. Then 20 people each have a **right** to their 10% shares of the company's profits. But it is impossible for each of these rights to be respected – it is impossible for us to dole out 200% of the profits. So the rights of some will have to be sacrificed to the rights of others – in this case it's likely that morality requires that everyone's rights will be infringed to some degree. Similarly, Thomson says, women have a right to control their own bodies. Pregnant women are no exception. If fetuses have a right to remain in their mothers' bodies until they are independently viable, we have a case in which two rights cannot both be respected in full. *Whose right should take precedence – the rights of the fetus or the rights of the pregnant woman?*

It might seem as though the right to life should always take precedence over the right to self control, but Thomson argues otherwise. She argues via analogy; [The Violinist (pp. 48-9).] There are a number of things to note about this argument.

First, note that all arguments via analogy assume that like cases are to be treated alike and different cases to be treated differently. If you cannot find some point of *disanalogy* between a pregnant woman and a woman who has been surreptitiously attached to an ailing violinist, and you cannot argue that this difference *justifies* the killing of the violinist but not the killing of the fetus, then you would be **irrational** to believe that abortion is never permissible but that killing the violinist would be.

Second, it is important to see the distinction Thomson relies on between what would be **nice** for you to do or **good** of you to do, and that which you are **morally required** to do. This is a distinction favored by all those who allow that some acts – say those that would only be committed by a saint – are *supererogatory*.

An act A is **supererogatory** if and only if not Aing is morally permissible, but Aing is morally better than not Aing.

(Utilitarianism (on its most simple formulation) denies that there is such a category. And we'll see that Peter Singer's reasoning (in an article we'll read later) relies on the class of supererogatory acts being either empty or surprisingly small.) Questions: What is your intuitive take on the case Thomson describes? Would it be immoral to detach yourself from the violinist? Is this act impermissible?

5. Limiting the scope of the anti-abortionist's argument

Let us suppose that you would not be immoral to detach yourself from the violinist. How might an anti-abortionist argue that there is a disanalogy between detaching from the violinist and aborting a fetus?

The most obvious difference between the two cases involves the role played by **decisions** made by the pregnant mother. One might say that because the mother chose to have sexual intercourse in full knowledge that she might get pregnant, she has an **obligation** to respect the rights of the person growing inside of her, but that because her choices or decisions played no role in her becoming attached to the

violinist she does not have an obligation to him. Note that this point of disanalogy only differentiates cases in which pregnancy results from voluntary intercourse. It could not be used to argue against the permissibility of aborting the fetus of a rape victim.

6. Thomson's rejection of this argument

Thomson rejects this response as follows: "Can those who oppose abortion on the grounds I just mentioned make an exception for a pregnancy due to rape? Certainly. They can say that all persons have a right to life only if they didn't come into existence because of rape; or they can say that all persons have a right to life, but that some have less of a right to life than others, in particular, that those who come into existence because of rape have less. But these statements have a rather unpleasant sound. Surely the question of whether you have a right to life at all, or how much of it you have, shouldn't turn on the question of whether or not you are the product of a rape." (p. 49)

Objection: Thomson's opponent admitted that rights can conflict. And she admitted that the mother has a right to self-control. But she insisted that the fetus' right to life was always *stronger* (or weightier) than the mother's right to self-control. Faced with the intuition that the violinist's right to life does **not** trump the victim's right to get out of bed, she **might** adjust her views about the varying strengths of a dependent person's right to life, but she **might instead** adjust her views about the varying strength of a person's **right to self control**. Those who oppose all abortion except for pregnancies induced by rape might say that a fetus is a person with a right to life, and that the strength of this right **never varies** so that every person has an equal right to the maintenance of her own life. Still, the opponent of abortion might now admit that a woman's right to self-control does sometimes outweigh the fetus' right to life. A woman's right to self-control outweighs the fetus' right to life when the fetus exists due to no intentional act on the mother's part. (This point is brought home by the intuition that the violinist's right to life does not obligate you to stay in bed for the rest of your life.) But when a woman engages in willful intercourse (when she consents to sex) she thereby **loses some of her right to self-control**. Her intentional act of intercourse decreases the strength of her rights in relation to those of a fetus should one develop in her womb. The opponent of abortion might think of consensual sex as a sort of "waiver": she might compare consensual sex to the signing of a document whereby one relinquishes one's right to sue before bungee jumping.

Question: How might Thomson respond? Can she respond to the opponent of abortion without dropping her assumption that the fetus is a person?

7. The Sophisticated Case Against Abortion

We were considering the view that abortion is only morally permissible when pregnancy is induced without the voluntary consent to intercourse on the part of the mother. Thomson raises one argument against even this limited anti-abortion position when she considers cases in which the mother's health is seriously compromised by the pregnancy. But let's put these cases to the side for the moment.

We're now considering the following anti-abortion position:

- (1) Every person has a right to life.
- (2) Every person has a right to control her body.
- (3) The strength of a person's right to life never varies (unless, perhaps, they've intentionally harmed another).

To represent premise (3) we can assign the right to life a **constant** number. Let's say that the strength of an innocent person's right to life is always 100 units.

(4) The strength of a person's right to self-control varies. (It seems that everyone who thinks incarceration is sometimes morally permissible, must think that this is so.)

(5) When a woman does not intentionally engage in intercourse, her right to self-control (with regard to pregnancy) has a strength that is greater than 100.

(6) When a woman does intentionally engage in intercourse her right to self control is less than 100 in strength.

(7) A fetus is a person.

Therefore,

(8) It is morally permissible for a raped woman to have an abortion; it is never morally permissible for a woman who willfully and intentionally engaged in the intercourse that led to her pregnancy to abort that pregnancy [given, as we're assuming, that her health is not put in serious jeopardy by the pregnancy].

8. Thomson's Reply: Thomson does not reply to this position directly. But she does provide the materials for a reply when she considers whether fetuses have a right to the use of the woman's body in which they are living. Thomson claims that the fetus could not have this right unless its mother somehow **gave it** the right. Obviously, as Thomson says, "It is not as though there were unborn persons drifting about the world, to whom a woman who wants a child says, 'I invite you in.'" Still, though woman cannot literally invite people (i.e. fetuses) to grow within them, Thomson considers whether knowingly and intentionally engaging in intercourse might be a different way of granting the "right of occupation" to any fetus that might result from that intercourse.

What we've seen, in our response to Thomson above, is that the right to use a mother's body is not really what is at issue. The question is whether a woman can sacrifice the **strength** of her claim to control over her own body by engaging in intercourse, not whether her intentional sexual act grants new "rights of occupancy" to potential fetuses (which is, I think, a problematic claim). We've been assuming that fetuses are people and that they therefore have a right to life; we're still puzzled about how this right might outweigh or be outweighed by the rights of another. Regardless, Thomson has an argument that might be used against the view that by intentionally having sex a woman loses some of the strength of her right to self control: People seeds (p. 13). To make the case analogous enough to warrant discussion we must assume, I think, that person-plant will die (or is likely to die) if it is uprooted from the carpet.

We are to suppose:

(1) A person-plant is a person and so has a right to life.

(2) The owner of the home in which the person-plant is developing has a right to control her home and its contents.

(3) The right of the home-owner to control her home's contents is stronger than the person-plant's right to life.

Question: Under what conditions would (3) be true? (a) Is (3) true if the home-owner does not install screens? (b) Is it true if the homeowner neglected to check her screens carefully each year, month, week or day? (c) Is sexual intercourse relevantly like having furniture or leaving one's windows open? Is it something that, morally speaking, we can *expect* a woman to forgo when she refuses to have children?

Regarding question (c):

(1) A homeowner cannot be reasonably expected to keep her windows closed or to live without furniture.

(2) If a homeowner cannot be reasonably expected to keep her windows closed or to live without furniture, and the only way a homeowner could have prevented the rooting of a particular person plant would have been by keeping her windows closed or living without furniture, then that homeowner's right to control of her house is stronger than that plant's right to life.

Therefore,

(3) If the only way a homeowner could have prevented the rooting of the person-plant would have been to live with closed windows or to live without furniture, that homeowner does not act immorally in ridding her house of that person-plant.

Analogously

(1) A woman cannot be reasonably expected to abstain from sexual intercourse.

(2) If a woman cannot be reasonably expected to abstain from sex, and the only way she could have prevented the creation of a certain fetus would have been by abstaining from sex (or doing something else it would be unreasonable to expect her to have done), then that woman's right to self control is stronger than that fetus' right to life.

Therefore,

(3) If the only way a woman could have prevented pregnancy would have been to abstain from sex, she does not act immorally in getting an abortion.

Notice, that even if we accept this argument, (given that we are admitting that the fetus is a person and so has a right to life) we are at least admitting: (a) The morality of an abortion depends on the actions of the pregnant woman in regard to conception of the fetus. And so, (b) Some abortions are not morally permissible. (Indeed, if it is reasonable to expect a woman to insist on having "safe sex" then no pregnancy that resulted from unsafe sex – or, at any rate, no pregnancy that resulted from sex in which the woman did not make every reasonable effort to have "safe sex" – could be aborted in a morally permissible fashion.) But surely, if Thomson has shown anything, she has shown (c) Some abortions are morally permissible.

9. Perfect vs. Imperfect Rights

Thomson spends considerable space arguing against the view that it is never permissible to conduct an abortion. She considers the view that even when a mother's life is in danger by continuing her pregnancy, and, say, the pregnancy resulted from rape, it is **still** impermissible to perform an abortion. The argument for this position, Thomson says, relies on the distinction between killing and letting die. The general idea is that abortion entails killing a person.

The Strong Anti-Abortion Position

(1) Allowing a pregnant woman to die from a problematic pregnancy does not entail killing a person.

(2) To abort a fetus is to kill a person.

(3) Killing a person is always morally worse than letting a person die.

Therefore,

(4) It is impermissible to perform an abortion to prevent a woman from dying.

I think Thomson's arguments against this view are extremely convincing, and I won't discuss them here. But I do want to raise some questions about the distinction between killing and letting die and the moral value of this distinction. One way to describe the moral significance of the difference between killing and letting die involves the distinction between perfect and imperfect rights and duties.

If D is a **perfect duty** then everyone bears D to all people at all times.

Is D is an **imperfect duty** then some people bear D toward some people at some times, but D is not a duty we all have to all people at all times.

A **perfect right** is a right that all people have at all times.

An **imperfect right** is not a right that all people have at all times, but it is a right that some people have at some times.

It is often argued that all perfect duties are **negative duties**. We all always have a duty *not* to harm anyone, *not* to coerce or enslave others, etc. But, it is argued, all **positive duties** – like the duty to help someone in need – are imperfect. Something similar might be said of rights: we each have a perfect right to freedom from coercion and violence, but we only have imperfect rights to the assistance and support of

others. (Note that to say that a right is perfect is *not* to say that it cannot conflict with other rights; nor is it to deny that the right may be outweighed by another.)

Thomson seems to believe that the only perfect duties are negative ones. She argues, for example, that Henry Fonda does not have a duty to fly to Boston from the West Coast even if his touch is the only thing that would enable Thomson to continue to live. And she eventually argues that even if Fonda is in the room with her, he does not have a duty to touch her brow. Thomson does say, though, that at least in the later case, in which Fonda finds himself in the hospital room with Thomson, Fonda **ought** to reach out and touch her brow. She just thinks that it does not follow from the fact that Fonda *ought* to touch her brow, that he has a *duty* to do so. And if Fonda does not have a duty to do so, she cannot be *entitled* to his doing so—she cannot have a *right* Fonda refuses to respect if he does not touch her brow. According to Thomson:

- (1) It is not the case that if S ought to X, S has a duty to X.
- (2) It is not the case that if S ought to X, it would be unjust of S not to X.
- (3) It is not the case that if S ought to treat Q in way W, then Q has a right to be treated by S in way W.

(See, for example, Thomson's discussion of Kitty Genovese. Thomson says that not calling the cops on Kitty's attacker was "monstrous," but it wasn't a violation of her **rights**.) Her argument for these claims rests on the intuition that Fonda does not have a duty to fly out to the East Coast to touch her brow, and if he does not then have that duty, he cannot suddenly come to have it by changing his geographical location—as she says, "It's rather a shocking idea that anyone's rights should fade away and disappear as it gets harder and harder to accord them to him" (p. 61).

Question: What if the content of the right is described more generally? Can't we say that Thomson has, say, a **perfect right** to be assisted in pursuing legitimate ends and projects when such assistance would not hinder the pursuit of the ends of another?

Perfect Benevolence: (1) All people at all times are **obligated** to assist other people in pursuing their legitimate ends and projects when such assistance would not hinder others in the pursuit of their ends. (Note that 'others' includes the person who must discharge his/her obligation.) (2) All people have a **right** to such assistance at all times.

This perfect right to benevolence would be a right Fonda was required to respect both when he was on the West Coast and when he was in the room with Thomson. (Indeed, if it's a perfect right, everyone has to respect it at all times—though again, it might conflict with other rights.) When Fonda is on the West Coast, he would have to abandon his ends and projects to assist Thomson in hers, so Thomson does not have a right to his assistance—she only has the right to the assistance of those who would not have to abandon their own legitimate ends (or hinder the ends of others) to help her pursue her own. However, when Fonda is in the hospital room with Thomson, he can assist her without abandoning any legitimate ends he (or others) might have. So, in such a case, he is morally required to assist Thomson by touching her brow. The rights and duties do **not** change with changes in the relative locations of Thomson and Fonda. Instead, a general right and a corresponding duty **remain constant**; what does change is what that right demands of Fonda, and what that right entitles Thomson to expect from Fonda. Of course, Thomson would reject Perfect Benevolence if she thought that the only perfect duties were negative duties. But that is far from obvious, as we'll see when we read Singer.